

HOUSE BILL NO. 601

INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO TOW TRUCKS; EXEMPTING CERTAIN TOW TRUCKS FROM CERTAIN INSURANCE AND EQUIPMENT REQUIREMENTS; REVISING THE DEFINITIONS OF "COMMERCIAL TOW TRUCK", "BUSINESS OFFICE", AND "ROTATION AREA"; ADDING LIABILITY INSURANCE REQUIREMENTS FOR CLASS D TOW TRUCKS; REVISING LAWS PERTAINING TO TOW TRUCK SATELLITE OPERATIONS; REVISING TOW TRUCK ROTATION AREAS; EXEMPTING CERTAIN TOW TRUCKS FROM WEIGHT LIMITS UNDER CERTAIN CIRCUMSTANCES; CREATING A GRACE PERIOD FOR EXISTING TOW TRUCK OPERATORS TO COMPLY WITH STATUTES; AMENDING SECTIONS 61-8-903, 61-8-904, 61-8-906, 61-8-908, 61-9-416, AND 61-10-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Tow trucks exempt from certain insurance and equipment requirements -- definitions. (1) If a tow truck owned or operated by a Montana-licensed motor vehicle wrecking facility is hauling the facility's own vehicle to its Montana-licensed motor vehicle wrecking facility, the tow truck is not required to:

(a) carry the insurance required under 61-8-906(1)(b) or (1)(c);

(b) comply with the provisions of 61-9-416(1)(b) and (1)(d) through (1)(f); or

(c) provide proof of insurance to the public service commission, as required in 61-8-906(2).

(2) The provisions of subsection (1) also apply to tow trucks that exclusively haul junk vehicles directly to government-owned or government-leased lots under written contract with a government entity.

(3) In this section, "junk vehicle" and "motor vehicle wrecking facility" have the meanings provided in 75-10-501.

NEW SECTION. Section 2. Business office requirements. (1) A business office must be open and accessible from 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. When an operator is not open for business and does not have personnel present at the business office, a clearly visible 24-hour telephone number must be posted at the business office for the purpose of advising the public on how to make contact with the

business for the release of vehicles or personal property.

(2) (a) Personnel must be available during business hours to answer phone calls and to release vehicles or personal property.

(b) A person from an adjoining or neighboring business may not be used to meet the requirements imposed under this subsection (2).

(3) A business office must receive mail service, either at the physical location of the office or at the local post office.

(4) A business office location must display a sign with the business name that is readable from the street.

(5) All required local, state, and federal posters and permits must be easily visible to the public inside the business office.

Section 3. Section 61-8-903, MCA, is amended to read:

"61-8-903. Definitions. As used in this part, the following definitions apply:

(1) "Boom" means an engineered structure that is either mechanically or hydraulically operated and that is capable of lifting and supporting an overhead, vertical load.

(2) "Business office" means a permanent building containing heat, electricity, and water that a commercial tow truck operator occupies, either continuously or at regular times, where towing business books and records are kept, where towing business is transacted in each assigned rotation area, and that meets the requirements in [section 2].

(3) (a) "Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public highways.

(b) If a tow truck owner or operator's business profits or benefits in any way from towing the vehicle, the tow truck must be considered a commercial tow truck for the purposes of Title 61, chapter 9, and this chapter.

~~(2)(4)~~ (4) "Commercial tow truck operator" or "operator" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

~~(3)(5)~~ (5) "Department" means the department of justice provided for in 2-15-2001.

~~(4)(6)~~ (6) "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

~~(5)(7)~~ (7) (a) "Qualified tow truck operator" means a commercial tow truck operator:

(i) that has equipment that:

(A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

(B) has been classified in accordance with 61-8-905;

(ii) that participates in the law enforcement rotation system provided for in 61-8-908; and

(iii) that meets the requirements of subsection ~~(5)(b)~~ (7)(b).

(b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

(ii) If the operator is an individual, the individual must hold a certification from a nationally recognized certification program for tow truck operators or have a minimum of 1 year of experience in the towing business for hire in Montana.

~~(6)(8)~~ "Rotation area" means the base area established pursuant to 61-8-908 where a qualified tow truck operator is dispatched and operates. ~~For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties.~~

~~(7)(9)~~ "Satellite operation" means a second or subsequent operation in another rotation area."

Section 4. Section 61-8-904, MCA, is amended to read:

"61-8-904. Prohibition -- exception. (1) A Except as provided in [section 1], a commercial tow truck operator may not operate for compensation upon the public roadways of this state unless the operator complies with the provisions of 61-8-906(1) and 61-8-907.

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of this part.

~~(3) Sections 61-8-901 through 61-8-908 and 61-8-910 do not apply to a commercial tow truck operator that does not operate for compensation."~~

Section 5. Section 61-8-906, MCA, is amended to read:

"61-8-906. Liability insurance -- storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, ~~as defined in 61-9-416,~~ or occurring on

1 the business premises of a commercial tow truck operator in an amount not less than:

2 (i) \$300,000 for class A tow trucks;

3 (ii) \$500,000 for class B tow trucks; ~~and~~

4 (iii) \$750,000 for class C tow trucks; and

5 (iv) \$300,000 for class D tow trucks;

6 (b) insurance in an amount not less than \$20,000 to cover the damage to cargo or other property
7 entrusted to the care of the commercial tow truck operator; and

8 (c) garage keepers legal liability insurance or on-hook liability insurance in an amount not less than
9 \$50,000.

10 (2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to
11 the public service commission.

12 (3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

13 (a) adequate for the secure storage and safekeeping of stored vehicles;

14 (b) located in a place;

15 (i) within the operator's rotation area that is reasonably convenient for public access; and

16 (ii) within 30 minutes of the operator's business office;

17 (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal
18 holidays;

19 (d) large enough to store all the vehicles towed for law enforcement agencies; ~~and~~

20 (e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a
21 manner sufficient to deter trespassing or vandalism; and

22 (f) adequate for storage of a minimum of four vehicles for each class of towing service provided by the
23 operator."

24
25 **Section 6.** Section 61-8-908, MCA, is amended to read:

26 **"61-8-908. State law enforcement rotation system -- satellite operations -- local government**
27 **rotation system.** (1) The department shall establish and maintain an equitable rotation system among qualified
28 tow truck operators that apply to the department in writing to be placed on the system. The rotation system:

29 (a) must be administered by the highway patrol in a manner that will give priority to public safety;

30 (b) must be based on the classification of equipment as provided in 61-8-905; and

(c) may include only qualified tow truck operators.

(2) Each qualified tow truck operator participating in the rotation system shall have available at the business office and show upon the request of a law enforcement officer:

(a) all Montana motor vehicle identification numbers or department of transportation numbers for the operator's tow trucks operating in the rotation system;

(b) the operator's federal tax identification number; and

(c) the operator's company phone number and street address.

(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in 61-8-912 information regarding each operator's individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.

(b) Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution committee shall, upon written request, verify that operators using a single storage or impoundment facility applying to be placed on the rotation system have individual accounting systems, adequate identification information, and individual insurance policies.

(4) Only one qualified tow truck operation for each owner may be included on a rotation area list.

(5) (a) An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation area separate from the rotation area where the owner is participating in the rotation system may establish a satellite operation to be included on a rotation area list if:

(i) the owner has a business office in the second rotation area;

(ii) the business office is open and accessible from 8 a.m. to 5 p.m., Monday through Friday;

(iii) the facilities have a secure yard as provided in 61-8-906(3)(e) and (3)(f); and

(iv) the tow truck operation has a local 24-hour phone number; and

(v) the operation has received approval from the appropriate district commander of the highway patrol.

(b) A motor vehicle operated out of a satellite location must be registered in the county in which the satellite operation's business office, as required under subsection (5)(a)(i), is located.

(c) A motor vehicle or equipment towed in response to a call from a law enforcement officer in the rotation area established in this section must be towed and stored at the satellite operation's secure yard provided for in subsection (5)(a)(iii).

~~(b)(d)~~ Any charges for towing service from the satellite operation must be calculated from the satellite

operation area and not the area of the owner's base operation.

(6) The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.

(7) (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck operator that is next on the rotation list if:

(A) a request for a tow truck is not made by the owner or driver;

(B) the requested tow truck cannot respond in a timely manner; or

(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or disabled vehicle.

(b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably available, the law enforcement officer may request other equipment to remove the hazard.

(8) The department shall administer the state law enforcement rotation system. A qualified tow truck operator may examine the rotation system schedule established by the department in order to determine if the system is being administered in an equitable manner.

(9) (a) Each district commander of the highway patrol shall establish geographic areas within that district to be designated as rotation areas.

(b) The geographical rotation area for each highway patrol district must be filed with the highway patrol district and may be modified as circumstances warrant.

(c) Considerations when establishing or modifying boundaries may include but are not limited to:

(i) the frequency and severity of crashes in areas in the highway patrol district;

(ii) the volume and pattern of traffic;

(iii) the availability of tow services;

(iv) the accessibility of tow services to the areas of need within each highway patrol district.

~~(9)~~(10) A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or

1 a local government to ensure compliance with this part.

2 ~~(10)~~(11) A local law enforcement agency may adopt and administer a local law enforcement rotation
3 system that complies with the provisions of this part. A tow truck operator desiring to be placed on the local law
4 enforcement rotation system must be a qualified tow truck operator as provided in this part.

5 ~~(11)~~(12) The highway patrol or local law enforcement shall provide upon request a record of rotation
6 system calls for all classes of tow trucks.

7 ~~(12)~~(13) Complaints about the rotation system must be referred in writing to the complaint resolution
8 committee established in 61-8-912."

9
10 **Section 7.** Section 61-9-416, MCA, is amended to read:

11 **"61-9-416. Commercial tow truck definition -- requirements.** (1) ~~"Commercial tow truck" means a~~
12 ~~motor vehicle operating for compensation that is equipped with specialized equipment designed and intended~~
13 ~~for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the~~
14 ~~public roadways. A commercial tow truck, as defined in 61-8-903, must be equipped with:~~

15 (a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must
16 be of a type approved by the department.

17 (b) at least two highway warning signs as provided in 61-9-431-;

18 (c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire
19 extinguisher, approved by the department;

20 (d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402(7), or both a red
21 and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be
22 seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under
23 normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp
24 facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled
25 vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position
26 considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light
27 must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position.
28 Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck
29 during the period of preparation at the location from which the disabled vehicle is to be towed.

30 (e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from

1 the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle
2 that is to be towed;

3 (f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall
4 spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

5 (g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on
6 the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined
7 vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable
8 of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to
9 in this subsection.

10 (2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles
11 shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway
12 warning sign as required in 61-9-431.

13 (3) The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906
14 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering
15 assistance to a disabled vehicle, notwithstanding other provisions of this code.

16 (4) A commercial tow truck company that is in compliance with 61-9-431 and that is operating an
17 emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in
18 response to any other hazard on the roadway that presents an immediate hazard or an emergency or
19 life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries,
20 costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of
21 61-9-402(5)."

22
23 **Section 8.** Section 61-10-128, MCA, is amended to read:

24 **"61-10-128. When authorities may restrict right to use roadway.** (1) A local authority may not alter
25 the limitations provided in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 or substitute other
26 limitations or requirements, except as provided in this section.

27 (2) The department of transportation by order, or a local road authority by ordinance or resolution, may
28 prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway
29 under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be
30 seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions; unless the use of

vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority that enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order, ordinance, or resolution is not effective until the signs are erected. The department of transportation or the authority by ordinance or resolution may prohibit the operation of trucks or other commercial vehicles or impose limitations on their weight on designated highways; subject to the provisions of subsection (3). These prohibitions and limitations must be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) the driver possesses a federal-state inspection certificate issued for the load; and

(c) the vehicle takes the most direct route from the point of loading to the nearest nonrestricted road.

(4) Hay grinders and their towing units are exempt from weight limits imposed by the department of transportation under this section.

(5) A commercial tow truck is exempt from weight limits imposed under this chapter if the commercial tow truck is towing a damaged, disabled, or abandoned vehicle or vehicle combination at the direction of a law enforcement officer or agency to the nearest location at which the vehicle or combination of vehicles can be made to comply with the provisions of this chapter."

NEW SECTION. Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [sections 1 and 2].

NEW SECTION. Section 10. Effective date. [This act] is effective July 1, 2009.

NEW SECTION. Section 11. Grandfather clause. An existing tow truck operator subject to regulation under Title 61 must be in compliance with the provisions of [this act] on or before January 1, 2010.

- END -